IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16590 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMANDING OFFICER NCC - Petitioner(s)
Versus
HEMRAJSINH BALVANTSINH JADEJA NCC QUARTER NO.1 & 7 - Respondent(s)

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Appearance :
MR DHAVAL G NANAVATI for Petitioner(s) : 1,
MR YOGESH S LAKHANI for Respondent(s) : 1,
MS ASMITA PATEL, Assistant Government Pleader for Respondent(s) : 2 - 5.
DS AFF.NOT FILED (R) for Respondent(s) : 6,
MS LILU K BHAYA for Respondent(s) : 7 - 8.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 02/11/2007

ORAL JUDGMENT

1. The petitioner – original defendant No.1 has filed this petition under Articles 226 and 227 of the Constitution of India praying for quashing and setting aside the impugned order dated 22.10.2003

passed by the Jt. District Judge, Bhavnagar in Misc. Civil Application No.132 of 2002 whereby the order passed by the learned 2nd Jt. Civil Judge (S.D.), Bhavnagar below an application Ex.5 in Regular Civil Suit No.601 of 2002 granting injunction against dispossession of the present respondent – original plaintiff, was confirmed.

2. It is the case of the petitioner that the present respondent – original plaintiff has filed Regular Civil Suit No.601 of 2002 before Civil Judge (S.D.) Bhavnagar restraining the defendants from dispossessing him from the NCC quarter as he was residing with his father since his birth in the NCC quarter. It is the case of the respondent – original plaintiff that the quarter was allotted to his father as he was in Lancers and Army Military of Old Bhavnagar State. The land on which the quarter is situated was previously a property of princely State of Bhavnagar. It is also the case of the petitioner that since 12.6.1986 the land is registered in the name of Defence Estate Officer Ahmedabad Circle and is being used by the Defence Department. The respondent was transferred from 6th Gujarat Battalion NCC Bhavnagar and posted at 13 Gujarat Battalion NCC Vallabh Vidyanagar on 23.4.2003 and Shri S.K.Saha was transferred in place of present respondent. The respondent No.1 was relieved but his son was staying in the quarter doing personal business by illegally using the portion of quarter. When the possession was sought to be taken forcefully from the

respondent, the respondent filed Regular Civil Suit No.601 of 2002 and injunction was granted in favour of the respondent No.1 in an application Ex.5 moved by respondent No.1 before the learned Civil Judge, Bhavnagar.

3. Being aggrieved by the said order, the petitioner alongwith others have filed Misc. Civil Appeal No.132 of 2002. The said appeal was also dismissed and order passed by the learned Civil Judge, Bhavnagar was confirmed. It is this order, which is under challenge in the present petition.

4. Mr. Dhaval Nanavati, learned advocate appearing for petitioner has submitted that the respondent has illegally occupied the quarter. The quarter belongs to the government and in support of his contention he relied on the revenue entry produced at page 32 of the petition which clearly indicates that from 1948 the land in question belongs to the government. He has further submitted that since the respondent No.1 was illegally occupying the quarter, on 27.1.2004 a notice was issued on him to vacate the said quarter by the Brigadier, Station Commander under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The said notice was challenged by respondent No.1 by way of filing an Appeal being Appeal No.14 of 2004. He has further submitted that in this Appeal though hearing was fixed, the respondent No.1 did not appear. He has further submitted that in the present petition this

Court has passed an order on 5.8.2004 whereby the petition was admitted and ad-interim relief was granted in terms of para 19(B) considering the decision of the Hon'ble Apex Court in the case of Kanniappan & Ors. vs. A. Perumal & Ors., reported in 2002 (10) SCC 98. The Court has also made it clear while granting interim relief that the Appeal preferred before the District Court, Bhavnagar being Appeal No.14 of 2004 may be heard. The petitioner was directed not to disturb the possession of the respondent till the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are over. He has, therefore, submitted that the impugned order passed by the Jt. District Judge, Bhanagar in Misc. Civil Appeal No.132 of 2002 deserves to be quashed and set aside.

5. Mr. Nanavati has invited court's attention that respondent No.1 has filed another petition being Special Civil Application No.20651 of 2007, wherein he has given his address as under :-

H.B.Jadeja,
C – 4839, Ayodhya Nagar,
Street No.3, Kaliyabid,
Bhavnagar – 364 002.

He has, therefore, submitted that the respondent No.1 has voluntarily vacated the quarter and now he is staying at the above address.

6. Mr. Ashis Dagli, learned advocate appearing for respondent No.1 has submitted that the petition filed under Article 227 should

not be entertained by this Court especially when concurrent findings are given by both the Courts below and hence scope of exercising of power by this Court under Article 227 of the Constitution of India are very limited. He has further submitted that the possession of the respondent No.1 over the property in question was undisputed and yet the authority has made an attempt to take away the possession which resulted into filing of complaint before the Bhavnagar "A" Division Police Station being CR No.I-43 of 2005 for offences punishable under Sections 147, 148, 149, 307, 323, 427, 447 of Indian Penal Code read with Section 25 (i), 27 & 29 of the Arms Act and also under Section 135 of the Bombay Police Act. He has further submitted that by taking benefit of petition before this Court and despite the fact that no relief was granted in favour of the petitioner, the possession was forcefully taken by the respondent. He has, therefore, submitted that the petition may be dismissed and the petitioner may be directed to hand over possession to the respondent No.1 forthwith.

7. Having heard learned advocates for the respective parties and having gone through the impugned orders passed by the Courts below and documents produced, the Court is of the view that at the time of admission of this matter this court has directed the parties to go on with the Appeal filed before the District Court being Appeal No.14 of 2004. Despite this direction the respondent No.1 chooses not to proceed with the said Appeal, and in that case

this Court is of the view that the District Court, Bhavnagar should proceed with the said Appeal No.14 of 2004 and decide it as expeditiously as possible and preferably within a period of six months from the date of receipt of writ or from the date of receipt of certified copy of this order, which ever is earlier. It is made clear that irrespective of the fact whether parties or their counsels remain present or not the Appeal may be decided on its own merit, within the above time limit.

8. As far as present petition is concerned, what is challenged in this petition is only with regard to the validity and legality of the orders granting interim injunction to the respondent No.1 during pendency of suit. The question which really assumes significance is whether the respondent No.1, is legally entitled to claim possession and whether the respondent No.1 is having any documentary evidence or title over the suit property. This issue is required to be decided first. In absence of any prayer for declaration of ownership or in absence of any document showing title of the respondent No.1 over the property in question, the suit filed by him before the trial Court is of no consequence. It is pertinent to note that the notice is issued by Brigadier under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and against this notice an Appeal is preferred by the respondent No.1. This fact itself indicates that according to the authorities the respondent No.1 is considered to be an unauthorised occupant of the property and

hence the issue regarding title and ownership is required to be decided.

9. In the above view of the matter, the trial Court is hereby directed to finally dispose of the suit only after Appeal No.14 of 2002 is decided and to mould the relief in terms of the outcome of Appeal No.14 of 2002. Till Appeal No.14 of 2004 is decided, the status quo as on today will be maintained by the parties.

10. Subject to the aforesaid observations and directions this petition is accordingly disposed of without any order as to costs.

(K. A. PUJ, J.)

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